

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRUCE L. HINSON

Claimant

VS.

USD 500

Respondent

Self Insured

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Docket No. 234,468

ORDER

Claimant appeals Administrative Law Judge Steven J. Howard's March 8, 2001, Award. The Appeals Board heard oral argument on September 25, 2001.

APPEARANCES

Chris R. Davis of Topeka, Kansas, appeared on behalf of the claimant. Frederick J. Greenbaum of Kansas City, Kansas, appeared on behalf of the self-insured respondent.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

This is a claim for cervical spine and low back injuries that claimant suffered as a result of a fall at work on May 27, 1998. At the time of the fall, claimant was employed by the respondent as a custodian. The Administrative Law Judge (ALJ) awarded claimant a 3 percent permanent partial general disability based on permanent functional impairment.

Claimant appeals and contends he proved he is entitled to a higher permanent partial general disability based on a higher permanent functional impairment rating and a higher work disability.

Conversely, respondent, in its brief before the Appeals Board (Board), contends claimant failed to prove the work-related fall permanently aggravated a preexisting spinal condition. Accordingly, respondent argues claimant is not entitled to a permanent partial general disability award. But, during oral argument, the respondent agreed the ALJ's

Award was accurate and consistent with the evidence in the record and requested the Board to affirm the 3 percent permanent partial general disability award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the ALJ's Award should be affirmed. The Board agrees with the ALJ's analysis of the evidence as set forth in the Award. In particular, the Board agrees that the court appointed independent medical examiner, orthopedic surgeon Dr. Don B. W. Miskew's opinions are the most persuasive and should be given the greatest weight in determining claimant's permanent functional impairment rating and permanent restrictions. Dr. Miskew's 3 percent opinion on permanent functional impairment was the only opinion expressed, as required by statute, in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition.¹ Moreover, Dr. Miskew opined that claimant's work-related fall and resulting physical injuries did not require claimant to have permanent restrictions imposed on his activities.

Finally, in regard to claimant's work disability claim, the evidence established that respondent returned claimant to accommodated employment for approximately four to five months and then eventually offered claimant other accommodated light work as a bus driver, a security guard and a teacher's aide. Respondent terminated claimant after he refused to even attempt those light work jobs.² Based on Dr. Miskew's opinion that claimant had no permanent restrictions, claimant retained the ability to earn a comparable wage. Therefore, a comparable wage should be imputed, resulting in claimant failing to prove a wage loss. Claimant also failed to prove he sustained a work task loss because he failed to have a physician express an opinion on claimant's work task loss as required by statute.³

In conclusion, the Board further agrees with the findings of fact and conclusions of law that are set forth in the Award. It is not necessary to repeat those findings and conclusions. Thus, the Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

¹ See K.S.A. 1997 Supp. 44-510e(a).

² See Foult v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995).

³ See K.S.A. 1997 Supp. 44-510e(a).

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Steven J. Howard's March 8, 2001, Award, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris R. Davis, Attorney for Claimant
Frederick J. Greenbaum, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director of Workers Compensation